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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,773	03/31/2004	Stephen R. Lawrence	24207-10069	7246

62296 7590 09/20/2007
GOOGLE / FENWICK
SILICON VALLEY CENTER
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EXAMINER

MOBIN, HASANUL

ART UNIT	PAPER NUMBER
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2168

MAIL DATE	DELIVERY MODE
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09/20/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No. 10/814,773	Applicant(s) LAWRENCE ET AL.	
	Examiner Hasanul Mobin	Art Unit 2168	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/31/2004 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10/7/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This communication is in response to the application filed on March 31, 2004.

Claims 1-51 are pending in the application.

Claim Objections

2. In claims 26-33, 38 and 41-47, various lines, the recitation of "'for" is intended use, never actually takes place, therefore renders any recitation claimed after not be given patentable weight. Claims should be amended to recite more direct and positive language such as "to", "which", "that", "configured to", or "modifying"/"entering".

Appropriate correction is required.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claim 16 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 20 of copending Application No. 11/051,317. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claim 16 of instant application is slightly broader than the claim 20 of copending Application No. 11/051,317.

Instant Application claim 16	Copending Application 11/051,317 claim 20
receiving a plurality of display calls associated with an application;	receiving a plurality of display calls associated with computer applications in a computer system;
processing the plurality of display calls to determine a display; and	processing the plurality of display calls to determine a target window based on a target window profile;
determining an event based at least in part on the display.	determining an event based at least in part on data captured from the target window; and
	Indexing the data captured from the target window and storing the event.

5. Claim 16 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 20 of copending Application No. 11/051,317. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter claimed in the instant application is fully disclosed in the copending application and is covered by the copending application

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since the copending application and the instant application are claiming common subject matter and they are substantially similar in scope.

The difference between the instant application and the copending application is that the instant application recites application in general in claim 16 while in addition claim 20 of copending application recites computer applications in a computer system. It would have been obvious to a person of ordinary skill in the art that an application in the instant application is a computer application and would require running in a computer system.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 26-50 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

With respect to claims 26 and 41, the claims lack the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, non-functional descriptive material *per se*.

Merely claiming nonfunctional descriptive material, i.e., abstract ideas, stored on a computer-readable medium, in a computer, or on an electromagnetic carrier signal, does not make it statutory. See *Diehr*, 450 U.S. at 185-86, 209 USPQ at 8 (noting that the claims for an algorithm in *Benson* were unpatentable as abstract ideas because “[t]he sole practical application of the algorithm was in connection with the programming of a general purpose computer.”).

These claims are directed towards software per se because they are merely instructions to collect data (i.e., abstract ideas stored in a computer readable media). Software per se, which is not patent eligible subject matter since it does not contain any structure that would allow it to be either a manufacture, machine, or composition of matter.

All claims dependent thereon, namely claims 27-40 and 42-50, fail to remedy these deficiencies, and are rejected for at least the same reasons.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-8, 13-15, 26-33, 38-40 and 51 are rejected under 35 U.S.C. 102(e) as being anticipated by Spector Corporate network Edition 4.0 ('Spector', hereafter, provided by the applicant's IDS).

Regarding claim 1, Spector teaches a computer based that receiving a plurality of keystrokes associated with an application (Spector provide the ability to record all keystrokes together, for each program window, Spector, page 6, lines 1-4);

processing each keystroke to determine an associated action forming a plurality of associated actions (recording information specific to the Instant Message, Chat, Email, Snapshot, Program. Events are stored as individual records that can later be searched, sorted, summarized, reported, or individually viewed, Spector, page 2); and

determining an event based at least in part on the plurality of associated actions (Snapshot events will provide a graphic detail of what the computer user was seeing, Spector, page 2).

Regarding claim 2, Spector teaches that determining an application in focus (Spector teaches only monitoring and recording selected Windows applications at page 9-10, section "Only record the following applications").

Regarding claim 3, Spector teaches that determining that the plurality of associated actions forms a word or words and wherein the event is a number of words (all other events can be searched by keywords to find particular events, Spector, page 2).

Regarding claim 4, Spector teaches that the word or words are determined at least in part by the receipt of at least one keystroke indicating a space or a punctuation symbol (it is obvious that when keystrokes that create actions and events could have space or punctuation).

Regarding claim 5, Spector teaches that determining that the plurality of associated actions form a character or characters and wherein the event is a number of characters (a skill person in the art knows that characters are associated with various graphical symbols and characters make up word and word or words make up events).

Regarding claim 6, Spector teaches that updating a capture state after each keystroke is processed (Page 6, lines 1-4: Spector provides the ability to record all keystroke typed (state change) on a client computer).

Regarding claim 7, Spector teaches that updating a current user state based at least in part on the event ((Page 6, lines 1-4: Spector provides the ability to record all keystroke together, for each separate windows in which they are typed).

Regarding claim 8, Spector teaches that indexing and storing the event (Spector teaches the event data are indexed into of Snapshot, Instant Message, Chat, Email, Program, Web Site, and Keystroke event categories at page 2, lines 1-5. Spector teaches events are stored as individual records (index into individual or person) that can later be searched, sorted, summarized, reported, or individual viewed at page 2, lines 5-6).

Regarding claim 13, Spector teaches that

receiving a plurality of keystrokes associated with an application (Spector provide the ability to record all keystrokes together, for each program window, Spector, page 6, lines 1-4);

determining an event based on user input (Spector provides the ability to Monitor Computer View of the Control Center to select the client computer to review. See viewing email for details on reviewing the recorded email, page 5); and

determining whether to index the event (Spector teaches the event data are indexed into of Snapshot, Instant Message, Chat, Email, Program, Web Site, and Keystroke event categories at page 2, lines 1-5. Spector teaches events are stored as individual records (index into individual or person) that can later be searched, sorted, summarized, reported, or individual viewed at page 2, lines 5-6).

Regarding claim 14, Spector teaches that user input is one or more of a number of words determined from the plurality of keystrokes, a number of characters determined from the plurality of keystrokes, and a change in focus from the application to another application (Spector provides the ability to record all keystrokes typed on a client, Spector, page 6, line 2).

Regarding claim 15, Spector teaches that whether to index the event comprises determining whether the event is important to the user (Spector teaches only monitoring and recording selected Windows applications at page 9-10, section "Only record the following applications").

Regarding claims 26-33, 38-40, although claims 26-33, 38-40 is directed to a computer-readable medium; it is similar in scope to claims 1-8, 13-15. It would be obvious to implement the method of claims 1-8, 13-15 on a computer-readable medium; the method of claims 1-8, 13-15 would inherently involve the need for the method to be implemented on a computer-readable medium. The method steps of claims 1-8, 13-15 substantially encompass the computer-readable medium recited in claims 26-33, 38-40 therefore; claims 26-33, 38-40 are rejected for at least the same reason as claims 1-8, 13-15 above.

Regarding claim 51, Spector teaches a method, comprising:

determining an application in focus (Spector teaches only monitoring and recording selected Windows applications at page 9-10, section "Only record the following applications");

receiving a plurality of keystrokes associated with the application (Spector provide the ability to record all keystrokes together, for each program window, Spector, page 6, lines 1-4);

processing each keystroke to determine an associated action forming a plurality of associated actions (recording information specific to the Instant Message, Chat, Email, Snapshot, Program. Events are stored as individual records that can later be searched, sorted, summarized, reported, or individually viewed, Spector, page 2);

determining that the plurality of associated actions forms a word or words (all other events can be searched by keywords to find particular events, Spector, page 2).;

determining an event based at least in part on the plurality of associated actions, wherein the event is a number of words (all other events can be searched by keywords to find particular events, Spector, page 2).;

determining whether to index the event (Spector teaches the event data are indexed into of Snapshot, Instant Message, Chat, Email, Program, Web Site, and Keystroke event categories at page 2, lines 1-5. Spector teaches events are stored as individual records (index into individual or person) that can later be searched, sorted, summarized, reported, or individual viewed at page 2, lines 5-6); and

indexing and storing the event if it is determined to index the event (Spector teaches the event data are indexed into of Snapshot, Instant Message, Chat, Email, Program, Web Site, and Keystroke event categories at page 2, lines 1-5. Spector teaches events are stored as individual records (index into individual or person) that can later be searched, sorted, summarized, reported, or individual viewed at page 2, lines 5-6).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. Claims 9-12 and 34-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spector Corporate network Edition 4.0 ('Spector', hereafter, provided by the applicant's IDS) in view of Cason et al. (US Patent Number 2005/0273332, 'Cason', hereafter).

Regarding claim 9, Spector does not teach that each associated action is determined at least in part by matching the keystroke to an entry in a keystroke table and determining an action in the keystroke table associated with the entry.

However Cason teaches that each associated action is determined at least in part by matching the keystroke to an entry in a keystroke table and determining an action in the keystroke table associated with the entry (the keyboard access system further includes a table recording valid typamatic function keys. The typamatic control compares the keystroke information and the valid typamatic function keys in the table and enqueues the keystroke information only if a comparison is found, Cason, Col 1, lines 60-65 and Fig. 3, 92).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made having the teachings of Spector and Cason before him/her to modify the method of Spector with the teaching of Cason. One would have been motivated to do so for the benefit of having an efficient keyboard interface with software component as taught by Cason (Cason, Col 1, lines 5-10).

Regarding claim 10, Spector as modified teaches that the action comprises one of adding a character to a word, deleting a character from a word, inserting a character, overwriting a character, deleting a word, deleting a paragraph, selecting an item, and repositioning the cursor (Data is moved, copied or deleted from a display in the text processing machines by setting a cursor at the first character to be deleted or the last character to be deleted and then moving the cursor through a textual display in either a vertical or horizontal direction or a combination thereof, Cason, Col 3, lines 49-54).

Regarding claim 11, Spector does not teach that the keystroke table is associated with the application.

However, Cason teaches that the keystroke table is associated with the application (Cason, Abstract).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made having the teachings of Spector and Cason before him/her to modify the method of Spector with the teaching of Cason. One would have been motivated to do so for the benefit of having an efficient keyboard interface with software component as taught by Cason (Cason, Col 1, lines 5-10).

Regarding claim 12, Spector does not teach that the keystroke table is a generic keystroke table.

However **Cason** teaches that the keystroke table is a generic keystroke table (Cason, Abstract).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made having the teachings of Spector and Cason before him/her to modify the method of Spector with the teaching of Cason. One would have been motivated to do so for the benefit of having an efficient keyboard interface with software component as taught by Cason (Cason, Col 1, lines 5-10).

Regarding claims 34-37, although claims 34-37 are directed to a computer-readable medium; it is similar in scope to claims 9-12. It would be obvious to implement the method of claims 9-12 on a computer-readable medium; the method of claims 9-12 would inherently involve the need for the method to be implemented on a computer-readable medium. The method steps of claims 9-12 substantially encompass the computer-readable medium recited in claims 34-37 therefore; claims 34-37 are rejected for at least the same reason as claims 9-12 above.

13. Claims 16-25 and 41-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spector Corporate network Edition 4.0 ('Spector', hereafter, provided by the applicant's IDS) in view of Jade et al. (US Pub Number 2003/0001854, provided by the applicant's IDS).

Regarding claim 16, Spector teaches that

processing the plurality of display calls to determine a display (Spector teaches only monitoring and recording selected Windows applications at page 9-10, section "Only record the following applications". Therefore, comparing (processing) plurality of display calls with selected Windows application information (target window profile) for determining to record only selected Windows application is also taught by Spector);

determining an event based at least in part on the display (Page 7, lines 22-33: the information recorded by Spector about program (data captured from the target window) executed on the Client computer can be very powerful in determining how user spent their time on the computer (determining an event)); and

Spector does not teach receiving a plurality of display calls associating with an application.

However, Jade teaches these graphic capturing techniques can be applied directly to any controls, buttons, windows and/or any other display objects that can be invoked (display calls) by an application (Jade, [0010], lines 6-9).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made having the teachings of Spector and Jade before him/her to modify the method of Spector with the teaching of Jade because it would capture the one or more graphics primitives associated with an application as taught by Jade (Jade, [0010], lines 1-3).

Regarding claim 17, Spector as modified teaches that determining an application in focus (Spector teaches only monitoring and recording selected Windows

applications at page 9-10, section "Only record the following applications". Therefore, comparing application information with selected Windows applications information (target application profiles) for determining to record only selected Windows applications (target application) is also taught by Spector, and Jade teaches further wherein the plurality of display calls are associated with target applications (Jade, [0010], lines 6-9).

Regarding claim 18, Spector as modified teaches that determining that the display includes a word or words and wherein the event is a number of words (all other events can be searched by keywords to find particular events, Spector, page 2, Spector records the content of email (captures text input), Page 3, lines 1-10).

Regarding claim 19, Spector as modified teaches that updating a capture state after each display call is processed (the patches allow for the capture of the various graphics primitives (display calls) and associated attributes of the primitives that are drawn to the user interface, Jade, [0011], lines 15-17).

Regarding claim 20, Spector as modified teaches that updating a current user state based at least in part on the event (a "calling process" is the process that utilizes the invention to capture the one or more graphics primitives of a display object (display elements) that can be invoked by the various application programs on the computer, Jade, [0023]).

Regarding claim 21, Spector as modified teaches that determining whether to index the event (Spector teaches the event data are indexed into of Snapshot, Instant Message, Chat, Email, Program, Web Site, and Keystroke event categories at page 2, lines 1-5. Spector teaches events are stored as individual records (index into individual

or person) that can later be searched, sorted, summarized, reported, or individual viewed at page 2, lines 5-6).

Regarding claim 22, Spector as modified teaches that indexing and storing the event (Spector teaches record the total time the program was opened at page 7, lines 1-18 and therefore, indexing and storing the event takes place after terminating the target window).

Regarding claim 23, Spector as modified teaches that the display is determined at least in part by using an array of a current state of the display and updating the array with the display call (This descriptive information can include parameters such as the type of display object (dialog box, menu, window, etc.) and its current state (active/inactive). Context information also includes system information such as the API calls and/or function calls made by the target application to render the display object to a user interface, the object handle or resource ID, the specific location of files called during execution of the display object, and any other information that provides a general context for the text that is displayed to the user interface screen 191 during the execution of the target process or application, Jade, [0026]. In addition it is also well known in the art that display is an array of the pixels and the current state of the display would be determined by the array of the pixels.).

Regarding claim 24, Spector teaches that the display is determined at least in part by constructing display items based at least in part on display positions of the display calls (a display object is invalidated each time a user resizes the display object or moves it to a different position within the user interface, Jade, [0039]).

Regarding claim 25, Spector as modified teaches that processing the plurality of display calls to determine a display comprises analyzing one or more of the x,y coordinates, lengths, and relative positions of a plurality of items written to the display using display calls (Jade teaches the graphics primitives include drawing elements (display items) such as text characters or strings, lines, arcs, polygons, etc., and have associated attributes that define its visual appearance such as font size, line length, and arc length, Jade, [0023], lines 7-11. In addition, the x,y coordinates and relative positions are well known in the art especially in graphical user interface (GUI)).

Regarding claims 41-50, although claims 41-50 are directed to a computer-readable medium, it is similar in scope to claim 16-25. It would be obvious to implement the method of claims 16-25 on a computer-readable medium; the method of claims 16-25 would inherently involve the need for the method to be implemented on a computer-readable medium. The method steps of claims 16-25 substantially encompass the computer-readable medium recited in claims 41-50 therefore; claims 41-50 are rejected for at least the same reason as claims 16-25 above.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Tervo et al. (U.S. Patent Number 6,907,577) discloses a system and method for accessing screen fields, functions and programs using a simple single keystroke.

Gray et al. (U.S. PGPub No. 2005/0060719) discloses capturing and processing user events on a computer system for recording and playback.

Hensley et al. (U.S. Patent Number 5,321,838) discloses event capturing for computer software evaluation.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hasanul Mobin whose telephone number is 571-270-1289. The examiner can normally be reached on Monday Thru Friday 7:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tim Vo can be reached on 571-272-3642. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HM
9/11/2007



TIM VO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

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Examiner
Art Unit 2168

